



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC534]

#### Marine Mammals; File No. 26727

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Aaron Lynton, 986 Kupulau Drive, Kihei, HI 96853, has applied in due form for a permit to conduct commercial and educational photography on humpback whales (*Megaptera novaeangliae*).

**DATES:** Written, telefaxed, or email comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 26727 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Erin Markin or Carrie Hubbard, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C.

1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film humpback whales in the waters off the coast of Maui for a documentary on their social interactions and behaviors in Hawaiian waters. The applicant would film and observe up to 400 adult/juvenile humpback whales and 75 humpback whale calves annually topside from a vessel, using an unmanned aircraft system (UAS), or underwater by diving. Up to 60 Hawaiian spinner dolphins (*Stenella longirostris*), 300 short-finned pilot whales (*Globicephala macrorhynchus*), and 120 bottlenose dolphins (*Tursiops truncatus*) annually may be harassed and opportunistically filmed if in the vicinity of the target species. The permit would be valid through May 2024.

It has come to the agency's attention that the 2016 interim final humpback approach rule (50 CFR 216.19; 81 FR 62010, September 8, 2016) does not explicitly exempt permits issued under section 104(c)(6) of the MMPA from its prohibitions. It is not the agency's intent to preclude the issuance of permits or authorizations consistent with the requirements of the MMPA. We interpret the rule to allow issuance of these permits. Consistent with this interpretation, it has been our practice to continue to issue section 104(c)(6) permits that are in compliance with the MMPA's requirements and our review procedures. However, to eliminate any potential ambiguity, we intend to revise the rule to explicitly clarify that photography permits issued under section 104(c)(6) of the MMPA are exempt from the prohibitions on approach.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 4, 2022.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division,*

*Office of Protected Resources,*

*National Marine Fisheries Service.*

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